2.0 DETERMINING ACTIVITIES THAT QUALIFY as HUMAN RESEARCH or CLINICAL INVESTIGATIONS

2.1 OBJECTIVE

To describe policies and procedures for determining the types of activities that qualifies as human research or clinical investigations and therefore requires prior Institutional Review Board (IRB) review and approval

2.2 GENERAL DESCRIPTION

In accordance with federal and institutional regulations, and prior to project implementation, the IRB must approve any undertaking in which a Howard University (HU) faculty, staff, or student conducts human research. The HU policy document entitled "When Do Activities Involving Human Subjects Need Institutional Review Board (IRB) Review and Approval"? outlines what types of activities are human subjects' research or clinical investigations, and therefore, require IRB review and approval.

2.3 DEFINITIONS – PRE 2018

2.3.1 Department of Health and Human Services (DHHS)/Common Rule

Research: A systematic investigation designed to develop or contribute to generalizable knowledge [45CFR 46.102(d)]. Activities which meet this definition constitute research, whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities. Some research development or testing and evaluation may also meet this definition.

Human subjects (according to the Department of Health and Human Services (DHHS) definition): A living individual about whom an investigator conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information.

Intervention includes both physical and psychological procedures by which data are gathered (for example, venipuncture) and manipulations of the subjects' environment performed for research purposes.

Interaction includes communication or interpersonal contact between investigator and subject.

Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (e.g. medical record). Private information must be individually identifiable (i.e., the identity of the subject is or may be readily ascertained by the investigator or associated with the information) in order for obtaining the information, to constitute research involving human subjects.

REVISION to The COMMON RULE

2.3.2 Definitions [§__.102]: Department of Health and Human Services (DHHS)/ Revised Common Rule

The following definitions will be applied when Howard University IRB reviews research subject to the revised Common Rule (effective January 19, 2019), and for exempt determinations and evaluations regarding whether a proposed activity is human subjects research when the research (or activity) is conducted or supported by a Common Rule agency. Likewise, the definitions will be applied, as applicable, to the conduct of the research, investigator responsibilities, and organizational responsibilities. Some of these definitions are unchanged from the pre-2018 rule but are included here for context.

***Clinical trial** means a research study in which one or more human subjects are prospectively assigned to one or more interventions (which may include placebo or other control) to evaluate the effects of the interventions on biomedical or behavioral health-related outcomes.*

***Human subject** means a living individual about whom an investigator (whether professional or student) is conducting research:*

(i) Obtains information or biospecimens through intervention or interaction with the individual, and uses, studies, or analyzes the information or biospecimens; or

(ii) Obtains, uses, studies, analyzes, or generates identifiable private information or identifiable biospecimens.

Intervention *includes both physical procedures by which information or biospecimens are gathered (e.g., venipuncture) and manipulations of the subject or the subject's environment that are performed for research purposes.*

Interaction *includes communication or interpersonal contact between investigator and subject.*

Private information *includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information that has been provided for specific purposes by an individual and that the individual can reasonably expect will not be made public (e.g., a medical record).*

Identifiable private information *is private information for which the identity of the subject is or may readily be ascertained by the investigator or associated with the information.*

An ***identifiable biospecimen*** *is a biospecimen for which the identity of the subject is or may readily be ascertained by the investigator or associated with the biospecimen.*

Legally authorized representative *means an individual or judicial or other body authorized under applicable law to consent on behalf of a prospective subject to the subject's participation in the procedure(s) involved in the research. If there is no applicable law addressing this issue, legally authorized representative means an individual recognized by institutional policy as acceptable for providing consent in the nonresearch context on behalf of the prospective subject to the subject's participation in the procedure(s) involved in the research.*

Minimal risk *means that that the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.*

Research *means a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge. Activities that meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program that is considered research for other purposes. For example, some demonstration and service programs may include research activities. For purposes of this rule, the following activities are deemed not to be research:*

(i) Scholarly and journalistic activities (e.g., oral history, journalism, biography, literary criticism, legal research, and historical scholarship), including the collection and use of information, that focus directly on the specific individuals about whom the information is collected.

(ii) Public health surveillance activities, including the collection and testing of information or biospecimens, conducted, supported, requested, ordered, required, or authorized by a public health authority. Such activities are limited to those necessary to allow a public health authority to identify, monitor, assess, or investigate potential public health signals, onsets of disease outbreaks, or conditions of public health importance (including trends, signals, risk factors, patterns in diseases, or increases in injuries from using consumer products). Such activities include those associated with providing timely situational awareness and priority setting during the course of an event or crisis that threatens public health (including natural or man-made disasters).

(iii) Collection and analysis of information, biospecimens, or records by or for a criminal justice agency for activities authorized by law or court order solely for criminal justice or criminal investigative purposes.

(iv) Authorized operational activities (as determined by each agency) in support of intelligence, homeland security, defense, or other national security missions.

***Written**, or in writing, refers to writing on a tangible medium (e.g., paper) or in an electronic format.*

2.3.3 Food and Drug Administration (FDA)

Clinical investigation: Involves use of a test article (i.e., drug, device, food substance, or biologic), one or more human subjects, meets requirements for prior submission to the FDA (involves drugs or medical devices other than the use of FDA approved drugs or medical devices in the course of medical practice), or results are intended to be part of an application for research or a marketing permit.

If the activities involve use of an FDA regulated test article (i.e., drug, device, food substance, or biologic under the purview of the FDA), HU applies the FDA definitions of “human subjects.”

Human subjects (FDA): An individual who is or becomes a participant in

research either as a recipient of a test article or as a control or as an individual on whose specimen a device is used. A subject may be either a healthy individual or a patient [21 CFR 56.102(e)] (Drug, Food, Biologic).

Human subjects (FDA for medical devices): A human who participates in an investigation, either as an individual on whom or on whose specimen an investigational device is used or as a control. A subject may be in normal health or may have a medical condition or disease [21 CFR 812.3(p)] (Medical Devices). This definition includes the use of tissue specimens even if they are unidentified.

If the research involves any of the following, FDA regulations 21 CFR 50 & 56 apply and require IRB approval prior to implementation:

- Any use of a drug in research other than the use of an FDA approved drug in the course of medical practice;
- Any use of a medical device in studies where the purpose is to determine the safety or effectiveness of the device; or
- Data will be submitted to or held for inspection by FDA as part of a marketing permit.

2.3.4 Howard University

The definition of *human subject* typically means only "living individuals"; however, at HU, research involving fetal tissue requires IRB review. Other exceptions involving collection of human specimens in FDA regulated device research may apply.

In cases where the definition of "research" or "human subject" is different from above, HU IRB applies institutional oversight based on the applicable sponsor or agency specific definitions.

A *principal investigator* may be an HU employee, or in rare cases may be an employee at a site with which HU has signed an IRB Memorandum of Understanding, IRB Authorization or Individual Investigator Agreement.

2.4 RESPONSIBILITY

Execution of SOPP: Principal Investigator (PI)/Study Personnel, Office of Regulatory Research Compliance (ORRC) Staff, IRB Members, IRB Chairs.

2.5 PROCEDURES

- It is the responsibility of each investigator to seek IRB review and approval prior to initiation of any research involving human subjects or before conducting any clinical investigation.

- The investigator is responsible for making a preliminary decision regarding whether his/her activities meet either (a) the Department of Health and Human Services (DHHS) definitions of both "research" and "human subjects" and/or (b) the FDA definitions of both "clinical investigations" and "human subjects." The document titled "When Do Activities Involving Human Subjects Need Institutional Review Board (IRB) Review and Approval?" is available to guide the investigator in making this decision (See attachment).

- The investigator may contact ORRC staff, the IRB Chair/Vice Chairs, or IRB members for advice on the applicability of the federal regulations and HU policy.

- In cases where it is not clear whether the study requires IRB review, the ORRC or the IRB may ask the investigator to send a memorandum to the IRB/ORRC by e-mail or hard copy detailing the proposed research. In complicated cases, the ORRC or the IRB may ask the investigator to complete and submit an application to the IRB for a decision. The Director or IRB Chair or their designees make the final determination whether the activities meet the federal definitions using the document, "When Do Activities Involving Human Subjects Need Institutional Review Board Review and Approval?" as a guide. The IRB or ORRC may require the investigator to contact the applicable regulatory agency to assist in making the determination.

- The ORRC communicates the decision of the IRB or the ORRC to the investigator e-mail, or hard copy.

2.6 REFERENCES

21 CFR 56.102
45 CFR 46.102